IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 5214 of 2007(U)

CC.348/1995 of J.M.F.C.-I,KOTTARAKKARA

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PETITIONER:

S. KAMALUDEEN, S/O.SHAHUL HAMEED,
KANAKAVILA PUTHEN VEEDU, VALIYAKADA CHERRY,
BEACH NORTHWARD, IOLLAM, NOW RESIDING AT
THARAVILA, KKOTTAMKARA,
CHANDANATHOPPE P.O., KOLLAM-14.

BY ADV. SRI.B.MOHANLAL
SRI.RATHEESH.P.R.

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, HOME DEPARTMENT,
CENTRAL SECRETARIAT, NEW DELHI.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

3. MADHAVAN SODARAN, MULLAKKAL HOUSE,
NEAR SANKERS HOSPITAL, KOLLAM.

BY ADV. SRI.C.R. SHIVAKUMAR (R3)
BY ADV. SRI.M.A.HAKEEM SHAH, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 5214 OF 2007-U

Dated this the 1st day of March, 2007

JUDGMENT

The petitioner faces indictment in a prosecution under Sec.138 of the N.I. Act. He was found guilty, convicted and sentenced. The verdict of guilty, conviction and sentence have now become final with the order passed by this Court in revision dated 30/7/01 in Crl.R.P.No.144/00. The petitioner now faces a sentence of rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a further period of three months. It is submitted that the matter has subsequently been settled with the complainant. The respondent/de facto complainant has entered appearance. Parties have filed a joint application for composition. It is reported that the matter has been settled between the parties and the complainant has compounded the offence under Sec.138 of the N.I. Act committed by the petitioner. Of course, such composition has been after the disposal of Crl.R.P.No.144/00.

2. The petition was filed initially for a direction to the 1st

respondent to consider the application for composition and other appropriate reliefs. Subsequently, in the light of the decision rendered in **Sabu George v. Home Secretary –** W.P.(c) No.34540/06 dated 14/2/07, the petitioner now prays that the powers under Sec.482 of the Cr.P.C. may be invoked and the petitioner may be saved of the sentence of imprisonment.

3. In the light of the decision in the said case, powers under Sec.482 of the Cr.P.C. (and of course Art.226/227 of the Constitution) can be invoked by this Court if it is satisfied that in the interests of justice, because of subsequent composition of the compoundable offence, the petitioner deserves to be spared in of a deterrent substantive sentence of imprisonment.

4. I am, in the facts and circumstances of this case, satisfied that the petitioner deserves to be spared in the interests of justice from a deterrent substantive sentence of rigorous imprisonment for a period of six months. Accepting the composition, there can hence be a direction under Sec.482 of the Cr.P.C. setting aside the execution of the substantive sentence of rigorous imprisonment for six months.

5. Accordingly, this writ petition is allowed in part. It is directed that the substantive rigorous imprisonment for six

months imposed on the petitioner as per judgment in C.C.No.348/95 on the file of the Judicial First Class Magistrate's Court, Kottarakkara, which has become final as per the judgment in Crl.A.No.145/98 of the Sessions Court, Kollam and Crl.R.P.No.144/00 passed by this Court shall not be executed against the petitioner.

6. The petitioner shall, of course, be liable to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of three months. The petitioner shall pay the amount of fine of Rs.5,000/- within a period of one week from this date. The default sentence shall not be executed till that date (i.e., 8/3/07).

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge